

B104 (FORM 104) (08/07)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS <i>Robert and Kathleen Morgenroth</i>		DEFENDANTS <i>DATAN ISLAND OWNERS ASSOCIATION</i>
ATTORNEYS (Firm Name, Address, and Telephone No.) <i>Michael Matthews 2015 Boundary St. Suite 319 Beaufort, SC 29902 843-379-0702</i>		ATTORNEYS (If Known)
PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee		PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) <i># 362 STAY Violation</i>		
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other		FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other
FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property		FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input checked="" type="checkbox"/> 72-Injunctive relief – other
FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)		FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest
FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)		FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment
FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation		FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause
FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny <i>(continued next column)</i>		
<input type="checkbox"/> Check if this case involves a substantive issue of state law <input type="checkbox"/> Check if a jury trial is demanded in complaint		<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23 Demand \$ _____
Other Relief Sought		

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BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR <i>Robert and Kathleen Morganroth</i>	BANKRUPTCY CASE NO. <i>18-06208-DD</i>	
DISTRICT IN WHICH CASE IS PENDING <i>South Carolina</i>	DIVISION OFFICE <i>Charleston</i>	NAME OF JUDGE <i>Jonca</i>
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING		DIVISION OFFICE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE <i>Jan 3, 2019</i>	PRINT NAME OF ATTORNEY (OR PLAINTIFF) <i>Michael Matthews</i>	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

In Re:)	
)	
Robert and Kathleen Morgenroth,)	CASE NO: 18-06208-DD
)	CHAPTER 7
Debtors,)	
)	
Robert and Kathleen Morgenroth,)	ADVERSARY
)	PROCEEDING NO.
Plaintiffs,)	
)	
v.)	COMPLAINT
)	
Dataw Island Owners Association)	
)	
Defendant.)	
)	

I. FOR A FIRST CAUSE OF ACTION – 11 U.S.C. § 362 STAY VIOLATION

This is an action by Plaintiffs seeking remedies for Defendant's violations of the automatic stay imposed pursuant to 11 U.S.C. 362(a), including injunctive relief, actual and punitive damages, as well as attorney fee's and costs.

1. Plaintiffs filed for bankruptcy relief under Chapter 7 on December 6, 2018.
2. Plaintiff's Meeting of Creditors is scheduled to be held on January 24, 2019.
3. This is a core proceeding pursuant to 28 U.S.C. § 157.
4. Venue lies in this District pursuant to 28 U.S.C. 1408 & 1409.
5. Defendant is listed as a secured creditor on Plaintiff's Schedule D.
6. Defendant is listed for notice on the mailing matrix filed within this case along with its attorney, James A. Grimsley, III Esquire.
7. By letter dated December 20, 2018, post-petition, Defendant willfully communicated directly with Plaintiff in an attempt to collect its debt with knowledge of Plaintiff's Chapter 7 case and the Automatic Stay. **Exhibit A.**
8. Among other things, the letter requires the Debtor's to pay \$20 in cash each time they enter through the gate.
9. The fee has been implemented. **Exhibit B.**

10. Additionally, the letter requires that if the Debtor's do not have \$20 in case to pay the gate fee for pre-petition debt, the Plaintiffs are required to "park their vehicle at a location off the premises and ask a neighbor or friend to give you a ride home."
11. The Debtor's live approximately 3 miles from the gate.
12. Ms. Morgenroth is wheelchair-bound and Defendant is fully aware of her severe physical condition and limitations.
13. As a result of Defendant's violation, Debtors have become hostages within their own home.
14. Pursuant to 11 U.S.C. § 362 the debtors are protected by the automatic stay upon filing for protection under the Bankruptcy Code. Actions taken in violation of the stay may be sanctioned by the court pursuant to 11 U.S.C. § 105(a) and attorney's fees granted to the aggrieved party.
15. The plaintiffs are informed and believe that they are entitled to damages suffered as a direct consequence of Defendants actions including, but not limited to actual and punitive damages, emotional distress and any other relief deemed appropriate by this Honorable Court.
16. The plaintiffs are further informed and believe that they are entitled to reasonable attorney's fees and costs incurred in the prosecution of this action.

II. FOR A SECOND CAUSE OF ACTION – 11 U.S.C. § 362(k) WILLFUL STAY VIOLATION

17. The plaintiffs reallege each and every allegation stated above.
18. Pursuant to 11 U.S.C. § 362 the debtors are protected by the automatic stay upon filing for protection under the Bankruptcy Code. Actions taken by others with knowledge of the automatic stay trigger the consequences of 11 U.S.C. § 362(k) which provides that "an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorney's fees, and, in appropriate circumstances, may recover punitive damages."
19. The plaintiffs are informed and believe that the Defendant had knowledge of the presence of the Stay as indicated by notice it received in the Chapter 7 case. The plaintiffs are informed and believe that they are entitled to damages suffered as a direct consequence of this violation.
20. The plaintiffs are further informed and believe that they are entitled to punitive damages to adequately redress the outrageous violation of the Stay.

21. The plaintiffs are further informed and believe that they are entitled to reasonable attorney's fees incurred in the prosecution of this action.

WHEREFORE, the plaintiffs prays this court issue its order finding the Defendant in violation of the automatic stay pursuant to the 11 U.S.C. § 362 and awarding damages pursuant to 11 U.S.C. § 105(a) and U.S.C. § 362(k) as follows:

1. Damages in an amount to be determined that Plaintiffs suffered as a direct consequence of the creditor's actions;
2. Punitive damages to adequately redress the outrageous actions of the defendant;
3. Reasonable attorney's fees and costs incurred in the prosecution of this action; and
4. Any further relief this court deems just and proper.

Respectfully Submitted,

/s/ Michael Matthews
Michael Matthews
Attorney for the Plaintiff
District Court ID# 10012
2015 Boundary Street
Suite 319
Beaufort, SC 29902
(843) 379-0702
(843)379-0703 fax
Matthews.michaelg@gmail.com

January 3, 2019

EXHIBIT

A



December 20, 2018

Mr. and Mrs. Robert Morgenroth
16 Doe Point
St. Helena, SC 29920

Dear Mr. and Mrs. Morgenroth,

Effective January 1 2019, the practice of allowing you to charge gate fees to your delinquent account will change. The Board of Directors has revised the policy to include payment by cash only and the fee has increased from \$10 to \$20 per access to the gate.

If you do not have \$20 in cash to pay the gate fee, you will be asked to park your vehicle at a location off the premises and ask a neighbor or a friend to give you a ride to your home.

We are not restricting you access to your property but will not allow you to use your vehicle on common property roads since you are no longer paying the annual homeowners association assessment collected to maintain those roads. In fact, by not paying the annual homeowner association assessment, you have elected to allow your neighbors to pay your share of the common costs to live on Dataw Island including security for your home and Infrastructure repair & replacement.

Please make sure you have the funds available in cash when entering the Island.

Sincerely,

Lori S. Murdough
Asst. GM / Controller
Dataw Island Owners Association

12/21/2018

bobmorgenroth@yahoo.com - Yahoo Mail

gate fees

Yahoo/Inbox



Asst. GM/Controller <lsmurdaugh@islc.net>
To: 'Robert & Kay Morgenroth'

Dec 20 at 3:20 PM

Mr. Morgenroth,

Attached is a letter from the DIOA on a change in the gate fee procedures effective January 1, 2019.

Lori S. Murdaugh

Assistant General Manager / Controller

Dataw Island Club

Dataw Island Owners Association

(843) 838-8434

1/1/2019

Asst. GM/Controller <lsmurdaugh@islc.net>
To: bobmorgenroth@yahoo.com

Jan 1 at 2:49 PM

Dataw Island Club
P. O. Box 819
Beaufort, SC 29901
(843) 838-8433

Email questions to: datawacct@islc.net

Robert & Kay Morgenroth
16 Doe Point
Dataw Island, SC 29920

Account #: **R0052**
Date: **Dec 31/18**
Amount Due: **70961.05**

Amount Paid: _____

Date	Ref.No.	Description	Amount	Service Charge	Tax	Total
		Balance Forward				66,566.42
Dec31/18	SJ1266	Annual Dining Minimum - Family	1,380.00	0.00	0.00	1,380.00
Dec31/18	SJ1270	Resident Monthly Dues	352.00	0.00	0.00	352.00
Dec31/18	SJ1271	Late Charges	2,662.63	0.00	0.00	2,662.63
		Total:	4,394.63	0.00	0.00	70,961.05

Minimum left to spend 0.00

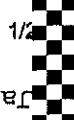
Minimum Spent YTD 1,380.00

Member	Current Bal.	30 Days Bal.	60 Days Bal.	90 Days Bal.	Amount Due
R0052	4394.63	3209.74	2761.77	60594.91	70,961.05

Statements are due and payable upon receipt.

On the last day of each month a Late Charge of 4% will be assessed on any remaining balances from the prior month.

Chits



EXHIBIT

B

date 1 / 2 / 2019 No. 523407

received from Robert Mengen ROTH \$20.00

amount Twenty - 20 - 00 dollars

for payment of GATE FEE

cash money order credit card check # 1/2/19

amount due	<u>20.00</u>
amount paid	<u>20.00</u>
balance	<u>0.00</u>

from 1/2/19 to 1/2/19

signature [Signature]

SMS80